

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MERRILL E. DAVIS and JEANNE P. DAVIS,

Plaintiffs,

v.

**1:10-CV-480
(FJS/RFT)**

CUMBERLAND FARMS, INC.,

Defendant.

CUMBERLAND FARMS, INC.,

Third-Party Plaintiff,

v.

**NORTHEAST PETROLEUM
TECHNOLOGIES, INC.,**

Third-Party Defendant.

APPEARANCES

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SCULLIN, Senior Judge

**EUGENE D. NAPIERSKI, ESQ.
MARK J. DOLAN, ESQ.**

**CHRISTOPHER M. MCDONALD, ESQ.
JOHN J. HENRY, ESQ.**

ORDER

Upon further review of the file in this matter, the Court hereby
ORDERS that the Court's January 29, 2013 Memorandum-Decision and Order is hereby
AMENDED as follows:

DELETE Section "**IV. CONCLUSION**" in its entirety, including footnote 4; and
ADD the following:

IV. CONCLUSION

After carefully reviewing the entire record in this matter, the parties' submissions, and the applicable law, and for the above-stated reasons, the Court hereby
ORDERS that Cumberland's motion for summary judgment is **GRANTED**; and the Court further

ORDERS that Plaintiff Jeanne Davis' derivative claim is **DISMISSED**; and the Court further

ORDERS that NPT's motion for judgment on the pleadings is **DENIED** as moot; and the

Court further

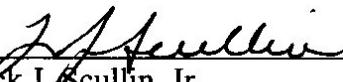
ORDERS that Cumberland's third-party complaint against NPT is **DISMISSED**; and the

Court further

ORDERS that the Clerk of the Court shall enter judgment and close this case.

IT IS SO ORDERED.

Dated: February 5, 2013
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge